

ATTORNEY GENERAL
DAVID H. SOUTER

THE STATE OF NEW HAMPSHIRE

DEPUTY ATTORNEY GENERAL
THOMAS D. RATH

ATTORNEYS
ANNE E. CAGWIN
DEBORAH J. COOPER
ANDREW R. GRAINGER
DAVID W. MARSHALL
RICHARD B. MICHAUD
EDWARD W. STEWART, Jr.
JUDITH MILLER KASPER
MARK H. PUFFER
STEVEN J. McAULIFFE



ASSISTANT ATTORNEYS
GENERAL

THOMAS B. WINGATE
EDWARD A. HAFFER
JOHN L. AHLGREN
GREGORY H. SMITH
JOHN T. PAPPAS
W. JOHN FUNK
EDWARD N. DAMON
JAMES E. MORRIS
JAMES C. SARGENT, Jr.
WILBUR A. GLAHN, III
PETER W. HEED
RICHARD B. McNAMARA
E. TUPPER KINDER
JOHN C. BOECKELER

THE ATTORNEY GENERAL
STATE HOUSE ANNEX, ROOM 208
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301

March 31, 1978

Lloyd M. Price, Commissioner
Department of Revenue Administration
19 Pillsbury Street
Concord, New Hampshire 03301

Dear Mr. Price:

This is in reply to your letter of August 26, 1977, in which you have asked this office for an opinion concerning the expenditure of federal funds in towns, cities, village districts, school districts and counties under varying circumstances. As you are aware it is your obligation, both in connection with the Department of Revenue Administration's auditing function pursuant to RSAs 71-A:19 and 20 and in connection with the Department's rate setting function pursuant to RSA 41:15, to ensure the legality of local appropriations and expenditures. In the first instance you have asked whether local officials may apply for, receive and expend federal funds without specific budgeting and approval therefor by the appropriate legislative body. Additionally and more specifically you have inquired whether it is necessary for local officials to acquire legislative approval with respect to some eleven million dollars of funds available under the Comprehensive Employment and Training Act of 1973 (C.E.T.A.) for distribution to local communities for programs to be carried out by September 30, 1978.

For the reasons outlined below the answer to your question is that legislative approval by all of the respective local governmental entities is generally required for acceptance and expenditure of federal funds, but that in the case of C.E.T.A. monies such might not be the case.

With respect to towns, it is well established law in New Hampshire that selectmen do not have authority to act on behalf of a town in any matter out of the ordinary. They are essentially administrators charged with overseeing the so-called

Lloyd M. Price, Commissioner
March 31, 1978
Page Two

prudential affairs of the town. DeRochemont v. Holden, 99 N.H. 80, 82 (1954), Palmer v. Farmington, 101 N.H. 131, 133 (1957) and cases cited therein. RSA 31:4 indicates that appropriation of any funds, regardless of their source, requires a town meeting. It would therefore be necessary for selectmen to be vested with authority by town meeting in order to apply for and expend federal monies in a specific instance. The cases cited above and this opinion do not address the issue of whether such authority can also be delegated in a general fashion.

In the case of cities, an essentially identical situation exists. While a city has a representative, not democratic, form of government, DeRochemont, *supra* at 82, this merely requires substitution of the common council for a town meeting and of the appropriate city officials for town selectmen. Cf. RSA 44:3. It must be noted, however, that in any instance a city might have a provision in its charter which would affect the power of city officials to apply for and expend federal funds. Therefore, the answer to your question in the case of a given city might be dependent on an examination of the charter of that city.

Counties, under the provisions of RSA Chapter 24, require action by the county convention "to make appropriations for the use of the county." RSA 24:13. Action by individual county officials in expending funds in the absence of a specific statutory source of authority is, as in the case of cities and towns, improper. Cf. O'Brien v. Rockingham County, 80 N.H. 522 (1923).

Village districts, governed by RSA Chapter 52, are analogized to towns both as bodies corporate and politic and in respect to all powers relating to the object of particular districts. RSA 52:3. Additionally, RSA 52:4 specifically enumerates the meeting and voting requirements which must be met for money to be raised and appropriated through any mechanism other than the annual meeting. That statute requires either a special town meeting with one half of the district's legal voters casting ballots or, in an emergency, a petition to the superior court to allow the special meeting to have the authority of an annual meeting.

School districts are likewise equated with towns under the provisions of RSA 194:1 and designated as corporate entities by RSA 194:2. Cf. Opinion of the Justices, 94 N.H. 500. For these reasons the meeting requirements necessary for acceptance of federal funds applicable to towns are likewise applicable to counties, village districts and school districts.

Lloyd M. Price, Commissioner
March 31, 1978
Page Three

With respect to C.E.T.A funds specifically the considerations discussed above would be inapplicable in instances in which the funds do not pass through the towns, cities or other local communities. In such cases they are not granted to local communities directly and they are therefore not expended by them; rather, local government entities merely enjoy the position of beneficiary of work done as a result of funds expended by the federal government (Office of Manpower Affairs). Since no funds are accepted, no local action of any kind is required. While presumably the federal government is not likely to expend funds for the benefit of local communities without first determining that the benefit is one which is desired, local cooperation would be a matter for local political consideration and would not in the usual case affect local appropriations or the Department of Revenue Administration.

The answer to your question, therefore, is that local legislative action is required only in those instances in which federal grants are processed through the town coffers and expended by the towns themselves.

Yours sincerely,



David H. Souter
Attorney General



Andrew R. Grainger
Attorney
Division of Legal Counsel